



## Q&A on Pregnant Women’s Coverage Under Medicaid and the ACA<sup>1</sup>

Prepared by: [Amy Chen](#) & [Emily Hayes](#)<sup>2</sup>

### Introduction

Access to affordable and high-quality comprehensive health care services during pregnancy has long depended on what type of health insurance one is eligible for and enrolled in. While that remains true, the Affordable Care Act (ACA) has also changed and expanded the health care options available to pregnant women. This Q&A addresses the coverage and services available to women who are uninsured, enrolled in traditional or expansion Medicaid, enrolled in a Marketplace health plan, or covered by private or employer-sponsored insurance.

### Uninsured Women

#### *Medicaid and CHIP for Uninsured Women*

#### **1. Can an uninsured woman enroll in a public health insurance plan upon becoming pregnant?**

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<sup>1</sup> Use of the term “women” throughout this Q&A is intended to be an inclusive definition of women to encompass trans women, genderqueer women, and gender nonconforming individuals who are significantly female-identified.

<sup>2</sup> Emily Hayes was an intern at NHeLP during the summer of 2017.

Yes, women who meet the eligibility criteria for Medicaid or Children's Health Insurance Program (CHIP) can enroll in one of these public programs at any point during pregnancy:

### Full-Scope Medicaid

A pregnant woman is eligible for full-scope Medicaid coverage at any point during pregnancy if eligible under state requirements. Eligibility factors include household size, income, residency in the state of application, and immigration status.<sup>3</sup> An uninsured woman who is already pregnant at the time of application is not eligible for enrollment in expansion Medicaid.<sup>4</sup>

### Pregnancy-Related Medicaid

If household income exceeds the income limits for full-scope Medicaid coverage, but is at or below the state's income cutoff for pregnancy-related Medicaid, a woman is entitled to Medicaid under the coverage category for "pregnancy-related services" and "conditions that might complicate the pregnancy."<sup>5</sup> The income limits for pregnancy-related Medicaid vary, but states cannot drop eligibility for this coverage below a legal floor that ranges from an income of 133% to 185% of FPL (Federal Poverty Level), depending on the state. States are permitted to set a higher income cutoff.<sup>6</sup>

### Children's Health Insurance Program (CHIP)

States also have the option of providing coverage to pregnant women under the state's CHIP plan.<sup>7</sup> This option is particularly important for women who are ineligible for other programs, such as Medicaid, based on income or immigration status. States can provide health care coverage either for a pregnant woman directly, or for a pregnant

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<sup>3</sup> In determining eligibility for Medicaid, the number of children the pregnant woman is expected to deliver count as part of household size. So, for example, if a woman is pregnant with triplets, she counts as a household of four. States may decide whether to count the pregnant woman as one or two people for determining the eligibility of others in the household. So if a woman is pregnant with triplets, in determining the eligibility of other household members, she would only count as one or two people. 42 C.F.R. § 435.603(b). Household income cannot exceed the limit set by the state cash assistance program (AFDC) that was in effect on May 1, 1996. 42 U.S.C. §§ 1396a(a)(10)(A)(i)(III), 1396d(n)(1); Medicaid Program Eligibility Changes Under the Affordable Care Act of 2010, 77 Fed. Reg. 17,144, 17,205 (March 23, 2012). States must accept self-attestation of pregnancy unless the state has information that is not reasonably compatible with such attestation. 42 C.F.R. § 457.380 (e).

<sup>4</sup> 42 U.S.C. § 1396a(a)(10)(A)(i)(VIII); 42 C.F.R. § 435.119(b) (defining eligibility for Medicaid Expansion). See pp. 7-8 *infra* for information about women already enrolled in expansion Medicaid.

<sup>5</sup> 42 U.S.C. §§ 1396a(a)(10)(A)(i)(IV), (VI); 42 U.S.C. §§ 1396a(l)(1)(A)-(C), 2(A)-(B). Pregnancy-related Medicaid that meets Minimum Essential Coverage (MEC) requirements is comprehensive coverage because it covers all medically necessary services. See Amy Chen, *Pregnancy-Related Medicaid and Minimum Essential Coverage*, NAT'L HEALTH LAW PROGRAM (Jan. 25, 2017), <http://www.healthlaw.org/issues/health-care-reform/pregnancy-related-medicaid-and-minimum-essential-coverage>.

<sup>6</sup> 42 C.F.R. § 435.116; 77 Fed. Reg. 17144 at 17,205.

<sup>7</sup> CHIP eligibility for pregnant women must be set at least at 185% FPL or the level it was in 2008, but may be set higher. 42 U.S.C. § 1397ll(a).

woman by covering the fetus.<sup>8</sup> Each state has discretion to establish maximum financial eligibility thresholds above a specified floor, but most states set their caps well over 200% FPL.<sup>9</sup>

## **2. Can a pregnant woman receive Medicaid or CHIP services prior to an eligibility decision?**

Maybe. States may elect, but are not required, to provide some categories of Medicaid enrollees, including pregnant women, with “presumptive eligibility.”<sup>10</sup> This allows pregnant women to receive immediate, same-day Medicaid services, typically at the clinic or hospital where they submit an application for Medicaid presumptive eligibility. Currently, 30 states provide presumptive eligibility to pregnant women.<sup>11</sup>

## **3. Is an uninsured woman who has access to a family member’s employer-sponsored health insurance, but has not enrolled in that plan, eligible for Medicaid or CHIP?**

Yes, Medicaid and CHIP eligibility is not affected by access to employer-sponsored or other types of private health insurance coverage.

## **4. Do Medicaid and CHIP provide pregnant women with comprehensive health coverage?**

Yes, in most but not all states. Full-scope Medicaid in every state provides comprehensive coverage, including prenatal care, labor and delivery, and any other medically necessary services.

Pregnancy-related Medicaid covers services “necessary for the health of a pregnant woman and fetus, or that have become necessary as a result of the woman having been pregnant.”<sup>12</sup>

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<sup>8</sup> 42 U.S.C. § 1397II(a). Child means an individual under age 19, including the period from conception to birth, so a state can elect to cover pregnant women as a means of covering “unborn children.” 42 C.F.R. § 457.10. For guidance from CMS about covering pregnant women through CHIP, see also CMS, Dear State Health Official (May 11, 2009), <https://downloads.cms.gov/cmsgov/archived-downloads/SMDL/downloads/SHO051109.pdf>; CMS, Dear State Health Official (Sept. 2, 2009), <https://www.medicare.gov/Federal-Policy-Guidance/downloads/SHO090309.pdf>.

<sup>9</sup> See Tricia Brooks *et al.*, *Where Are States Today? Medicaid and CHIP Eligibility, Enrollment, Renewal, and Cost Sharing Policies as of January 2018: Findings from a 50-State Survey* Table 4, KAISER FAMILY FOUND. (March 2018), <http://files.kff.org/attachment/Report-Medicaid-and-CHIP-Eligibility-Enrollment-Renewal-and-Cost-Sharing-Policies-as-of-January-2018>.

<sup>10</sup> CMS, Dear State Health Official (Sept. 2, 2009), *supra* note 8.

<sup>11</sup> For a list of which states provide presumptive eligibility for pregnant woman, see *Presumptive Eligibility in Medicaid and CHIP*, KAISER FAMILY FOUND. (Jan. 1, 2017), <http://www.kff.org/health-reform/state-indicator/presumptive-eligibility-in-medicare-chip>.

<sup>12</sup> 42 C.F.R. § 440.210(a)(2)(i).

Federal guidance from the Department of Health and Human Services (HHS) clarified that the scope of covered services must be comprehensive because the woman's health is intertwined with the fetus' health, so it is difficult to determine which services are pregnancy-related.<sup>13</sup> Federal statute requires coverage of prenatal care, delivery, postpartum care, and family planning, as well as services for conditions that may threaten carrying the fetus to full term or the fetus' safe delivery.<sup>14</sup> The state ultimately decides what broad set of services are covered. Forty-seven states provide pregnancy-related Medicaid that meets minimum essential coverage (MEC) and thus is considered comprehensive. Pregnancy-related Medicaid in Arkansas, Idaho, and South Dakota does not meet MEC and is not comprehensive.<sup>15</sup>

CHIP coverage for pregnant woman is also typically comprehensive. However, in states where services are being provided to the pregnant woman by covering the fetus, the services may not be comprehensive with respect to the health needs of the pregnant woman.

## 5. What is the cost-sharing obligation under Medicaid or CHIP?

None. Medicaid law prohibits states from charging deductibles, copayments, or similar charges for services related to pregnancy or conditions that might complicate pregnancy, regardless of the Medicaid enrollment category.<sup>16</sup> HHS presumes "pregnancy related services" includes all services otherwise covered under the state plan, unless the state has justified classification of a specific service as not pregnancy-related in its state plan. States may, however, impose monthly premiums on pregnant women with incomes above 150% of FPL and charge for non-preferred drugs.<sup>17</sup>

Most states that cover pregnant women in their CHIP program do not have cost-sharing or any other fees associated with participation in the program.<sup>18</sup>

## 6. How long does Medicaid or CHIP coverage for pregnancy last?

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<sup>13</sup> Medicaid Program; Eligibility Changes under Affordable Care Act of 2010, 77 Fed. Reg. 17,143, 17,149 (Mar. 23, 2012).

<sup>14</sup> 42 C.F.R. § 440.210(a)(2)(i)-(ii).

<sup>15</sup> Chen, *supra* note 5, at 4.

<sup>16</sup> 42 U.S.C. §§ 1396o(a)(2)(B), 1396o(b)(2)(B) (prohibiting deductions, cost-sharing, or similar charges for pregnancy-related services for pregnant women); 42 C.F.R. §§ 447.53(d), 447.56(a)(vii) (permitting cost-sharing for non-preferred but not preferred prescription drugs for pregnant women in Medicaid); Medicaid and Children's Health Insurance Programs: Essential Health Benefits in Alternative Benefit Plans, Eligibility Notices, Fair Hearing and Appeal Processes, and Premiums and Cost-sharing; Exchanges; Eligibility and Enrollment; 78 Fed. Reg. 42160, 42,281 (July 15, 2013) (clarifying family planning supplies and services, including contraceptives, are exempt from cost-sharing).

<sup>17</sup> 42 U.S.C. § 1396o(c).

<sup>18</sup> *Fact Sheet: State Children's Health Insurance Program (S-CHIP) Coverage During Pregnancy*, Association of State and Territorial Health Officials (2016), <http://www.astho.org/Maternal-and-Child-Health/State-Childrens-Health-Insurance-Program-S-CHIP-Coverage-During-Pregnancy>.

Medicaid or CHIP coverage based on pregnancy lasts through the postpartum period, ending on the last day of the month in which the 60-day postpartum period ends, regardless of income changes during that time.<sup>19</sup> Once the postpartum period ends, the state must evaluate the woman's eligibility for any other Medicaid coverage categories.

## 7. Is abortion covered by Medicaid or CHIP?

The Hyde Amendment, an annual requirement added by Congress to a federal appropriations bill, prohibits using federal funds abortion coverage except when a pregnancy results from rape or incest, or when continuing the pregnancy endangers the woman's life.<sup>20</sup> However, states may use their own funds to cover abortions, and 17 states currently do.<sup>21</sup>

## 8. Can uninsured immigrant women receive Medicaid or CHIP services?

Maybe. Immigrants with qualified non-citizen status are eligible to enroll in Medicaid if they otherwise meet state Medicaid eligibility requirements, but are subject to a five-year waiting period from the time they receive their qualifying immigration status before becoming eligible.<sup>22</sup> Some categories of qualified non-citizens are exempt from the five-year ban because they are considered lawfully residing immigrants.<sup>23</sup> For lawfully residing immigrants, the five-year waiting period was waived in 2010, giving states the option to provide lawfully residing immigrant women with pregnancy-related Medicaid regardless of the length of time they have been in the U.S.<sup>24</sup> Twenty-three states provide pregnancy-related Medicaid to lawfully residing immigrants without waiting periods.<sup>25</sup> For undocumented and DACA-eligible immigrants, states

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<sup>19</sup> 42 U.S.C. § 1396a(e)(6).

<sup>20</sup> For more about the Hyde Amendment, see Alina Salganicoff et al., *The Hyde Amendment and Coverage for Abortion Services*, KAISER FAMILY FOUND. (Sep. 30, 2016), <http://www.kff.org/womens-health-policy/perspective/the-hyde-amendment-and-coverage-for-abortion-services>.

<sup>21</sup> *State Funding of Abortion Under Medicaid*, GUTTMACHER INST. (June 1, 2017), <https://www.guttmacher.org/state-policy/explore/state-funding-abortion-under-medicaid>; Alina Salganicoff et al., *Coverage for Abortion Services in Medicaid, Marketplace Plans, and Private Plans*, KAISER FAMILY FOUND. (Jan. 20, 2016), <http://www.kff.org/womens-health-policy/issue-brief/coverage-for-abortion-services-in-medicaid-marketplace-plans-and-private-plans>.

<sup>22</sup> *Coverage for lawfully present immigrants*, HEALTHCARE.GOV, <https://www.healthcare.gov/immigrants/lawfully-present-immigrants>.

<sup>23</sup> *Id.*

<sup>24</sup> CMS, Dear State Health Official (July 1, 2010), <https://www.medicaid.gov/federal-policy-guidance/downloads/sho10006.pdf>.

<sup>25</sup> *Medicaid/CHIP Coverage of Lawfully-Residing Immigrant Children and Pregnant Women*, KAISER FAMILY FOUND. (Jan. 1, 2017), <http://www.kff.org/health-reform/state-indicator/medicaid-chip-coverage-of-lawfully-residing-immigrant-children-and-pregnant-women>.

may provide undocumented immigrant women with federally funded prenatal services through CHIP.<sup>26</sup> Some states may also provide prenatal care entirely using state funds.<sup>27</sup>

## **Marketplace Options for Uninsured Women**

### **1. Can uninsured women enroll in Marketplace coverage upon becoming pregnant?**

Only if it is within the established open enrollment period or a woman qualifies for a special enrollment period (SEP), does not have a plan that meets MEC through Medicaid or an employer, and meets income and immigration criteria. Note that except in the states of New York and Vermont, pregnancy does not trigger an SEP.<sup>28</sup>

Under the ACA, people who do not qualify for Medicaid coverage that meets MEC, and have incomes between 100% and 400% FPL, qualify for advance premium tax credits (APTCs) and cost-sharing reductions (CSRs), which they can use to reduce the cost of health insurance purchased through a Marketplace.<sup>29</sup> Those with pregnancy-related Medicaid in the three states that do not constitute MEC (Arkansas, Idaho, and South Dakota) are eligible for Marketplace subsidies.<sup>30</sup> Certain lawfully-present immigrants with incomes under 100% FPL subject to Medicaid's five-year ban in their state are also eligible for APTCs.<sup>31</sup> Undocumented immigrants are not eligible for APTCs, CSRs, or Marketplace insurance.<sup>32</sup>

### **2. What is the cost-sharing obligation under a Marketplace plan?**

<sup>26</sup>Samantha Artiga & Anthony Damico, *Health Coverage and Care for Immigrants*, KAISER FAMILY FOUND. (June 11, 2017), <http://www.kff.org/disparities-policy/issue-brief/health-coverage-and-care-for-immigrants>.

<sup>27</sup> Tanya Broder et al., *Overview of Immigrant Eligibility for Federal Programs*, NAT'L IMMIGRATION LAW CTR. (Dec. 2015), <https://www.nilc.org/wp-content/uploads/2015/12/overview-immeligfedprograms-2015-12-09.pdf>; *FREQUENTLY ASKED QUESTIONS: Exclusion of Youth Granted "Deferred Action for Childhood Arrivals" from Affordable Health Care*, NAT'L IMMIGRATION LAW CTR. (Sept. 2013), <https://www.nilc.org/issues/health-care/acadacafaq/>.

<sup>28</sup> Amy Chen & Mimi Spalding, *State Creation of Special Enrollment Periods for Pregnancy*, NAT'L HEALTH LAW PROGRAM 6-7 (Jan. 26, 2017), <http://www.healthlaw.org/issues/reproductive-health/pregnancy/state-creation-of-sep-for-pregnancy>.

<sup>29</sup> 26 U.S.C. § 36B(c)(1)(A). A "qualified individual" can obtain coverage through the Marketplace. 42 U.S.C. § 18031(d)(2)(A). A "qualified individual" excludes incarcerated persons, and persons with certain immigration statuses. *Quick Guide to the Health Insurance Marketplace: Are You Eligible to Use the Marketplace?* HEALTHCARE.GOV, <https://www.healthcare.gov/quick-guide/eligibility>.

<sup>30</sup> CMS, Dear State Health Official #14-002, Minimum Essential Coverage 10 (Nov. 7, 2014), <https://www.medicaid.gov/federal-policy-guidance/downloads/sho-14-002.pdf>. CMS, *Medicaid Secretary-Approved Minimum Essential Coverage*, DEP'T HEALTH & HUMAN SERVS. 2, 5-6 (Fed. 16, 2012), <https://www.medicaid.gov/medicaid/benefits/downloads/state-mec-designations.pdf>. In addition to some pregnancy-related Medicaid, the following types of Medicaid coverage are not considered MEC: family planning expansion under a state plan amendment; optional coverage of tuberculosis-related services; and coverage of medical emergency services only. 78 Fed. Reg. 53646 at 53,658 (Aug. 30, 2013).

<sup>31</sup> 26 U.S.C. § 36B(c)(1)(B).

<sup>32</sup> 42 U.S.C. § 18071(e)(1).

Marketplace plans may include premiums, co-pays, and deductibles. The ACA requires new group health plans and insurance issuers to cover women’s health preventive care and screenings in accordance with Health Resources and Services Administration guidelines. Health plans must cover well-women visits and some preventive services, including some key prenatal care services, without cost-sharing.<sup>33</sup> However, pregnant women in the Marketplace may have cost-sharing for some prenatal visits and pregnancy services such as labor and delivery and postpartum care. The amount of cost-sharing required will depend on many factors including household size, income, choice of plan, and APTC or CSR eligibility.

### **3. Is a woman who has access to a family member’s employer-sponsored health insurance, but has not enrolled in that plan, eligible for subsidies in the Marketplace?**

Possibly. If the employer-sponsored insurance is unaffordable or not MEC, the woman is eligible for APTCs.<sup>34</sup> Affordability is determined by the IRS standards for the percentage of income a person is expected to spend on insurance.<sup>35</sup> This calculation applies to the cost of the employee’s insurance, not the cost of the family plan. That means that if the premiums for the employee’s insurance are “affordable,” no member of the family is eligible for an APTC. If the individual’s premium is unaffordable, the family will be eligible for APTCs in an amount determined by their income and the premium cost.<sup>36</sup>

### **4. Can an uninsured woman enroll in Marketplace coverage upon giving birth?**

Maybe. If the baby is eligible for Marketplace coverage, then the baby qualifies for an SEP as a “new dependent.”<sup>37</sup> In such instances, the regulations will also permit an SEP for the new mother, as someone who has “gained a dependent” through birth.<sup>38</sup>

## **Women Already Enrolled in Full-Scope or Expansion Medicaid**

### **1. What changes when a woman already enrolled in Medicaid becomes pregnant?**

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<sup>33</sup> *Women’s Preventive Services Guidelines*, HEALTH RES. & SERVS. ADMIN. (Dec. 20, 2016), <https://www.hrsa.gov/womensguidelines2016/index.html>. For more information about which preventive services related to pregnancy are covered without cost-sharing, see *Preventive Service Tracker*, KAISER FAMILY FOUND. (Sep. 2015), <http://www.kff.org/report-section/preventive-service-tracker-pregnancy-related>.

<sup>34</sup> 42 U.S.C. § 18082 (a)(2)(B).

<sup>35</sup> 26 C.F.R. § 1.36B-3(g)(2).

<sup>36</sup> *Id.*

<sup>37</sup> 45 C.F.R. § 155.420(d)(2)(i).

<sup>38</sup> *Id.*

Generally, nothing. A woman who was previously eligible and enrolled in full-scope Medicaid who becomes pregnant continues to be eligible, and will be able to access pregnancy services.<sup>39</sup> A woman who becomes pregnant while enrolled in Medicaid Expansion can stay in that coverage, at least until redetermination.<sup>40</sup> The state must inform the woman of the benefits afforded to pregnant women under other coverage categories, such as pregnancy-related Medicaid, and provide the option to switch categories if the woman is eligible.<sup>41</sup>

## **2. Will Medicaid also cover a newborn?**

Yes. A child born to a woman enrolled in Medicaid or CHIP at the time of the birth is eligible for deemed newborn coverage. This coverage begins at birth and lasts for one year, regardless of any changes in household income during that period.<sup>42</sup>

## **3. What is the cost-sharing obligation under Medicaid?**

See answer to Question #5 in the “Uninsured Women: Public Options for Uninsured Women” section above.

## **4. Do full-scope and expansion Medicaid provide pregnant women with comprehensive health insurance?**

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<sup>39</sup> These services may vary based on the type of Medicaid. “While the ACA also does not define maternity benefits, states that have expanded Medicaid eligibility under the ACA must cover all preventive services recommended by the United States Preventive Services Task Force (USPSTF) for beneficiaries that qualify as a result of the ACA expansion. These now include many pregnancy-related services, such as prenatal screenings, folic acid supplements, and breastfeeding supports for those who qualify for Medicaid as a result of the expansion. This coverage requirement, however, does not apply to any of the Medicaid eligibility pathways that were available prior to the ACA (i.e., for parents or pregnant women). As a result, there is leeway for states to vary coverage standards for different Medicaid eligibility pathways (e.g. traditional Medicaid available prior to the ACA, ACA Medicaid expansion, or pregnancy-related eligibility).” Kathy Gifford et al., *Medicaid Coverage of Pregnancy and Perinatal Benefits: Results from a State Survey*, KAISER FAMILY FOUND. (April 27, 2017), <http://www.kff.org/womens-health-policy/report/medicaid-coverage-of-pregnancy-and-perinatal-benefits-results-from-a-state-survey>.

<sup>40</sup> 77 Fed. Reg. at 17,149 (stating that state does not have to transfer a woman who becomes pregnant already enrolled under the Medicaid Expansion category to coverage under the pregnancy-related services category since states are not required to monitor pregnancy status). However, it is not clear whether a woman will have to switch to the pregnancy-related category if she comes up for redetermination while enrolled in the new Medicaid category for low-income adults.

<sup>41</sup> *Id.* See also CMS, *Questions and Answers: Medicaid and the Affordable Care Act* at A11-A12 (Feb. 2013), <http://www.medicare.gov/state-resource-center/FAQ-medicare-and-chip-affordable-care-actimplementation/downloads/aca-faq-bhp.pdf>.

<sup>42</sup> CMS, Dear State Health Official (Aug. 31, 2009), <https://www.medicare.gov/federal-policy-guidance/downloads/sho-08-31-09b.pdf>.

Yes.<sup>43</sup> Medicaid coverage includes prenatal care, labor and delivery, and all medically necessary services regardless of whether they are directly related to the pregnancy.

## Women Already Enrolled in Marketplace Health Plans

### 1. Do Marketplace health plans provide women with comprehensive coverage, including maternity care?

Yes. All Marketplace plans must include the ten Essential Health Benefits (EHBs), one of which is maternity and newborn care.<sup>44</sup> HHS has not specified what must be covered under this category, delegating that authority to the states.<sup>45</sup> Thus, specific benefits covered under maternity care vary by state.

### 2. What changes when a woman enrolled in a Marketplace plan becomes pregnant?

Nothing, unless she wants it to. The woman may choose to remain in a Marketplace plan or, if eligible, to enroll in Medicaid or CHIP. The woman will not lose eligibility for the APTCs as a result of access to MEC through full-scope or pregnancy-related Medicaid, but cannot be enrolled in both simultaneously and thus must choose.<sup>46</sup> In deciding which coverage to select, overall cost, access to preferred providers, impact of transitioning across plans, and effect on family coverage influence preference.

### 3. Can a woman who transitioned from Marketplace insurance to Medicaid or CHIP re-enroll in a Marketplace plan, if otherwise eligible, upon giving birth?

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<sup>43</sup> But note that women who are already pregnant at the time of application are not eligible to enroll in expansion Medicaid. Women who are already enrolled in expansion Medicaid at the time that they become pregnant may either retain their current coverage until their next renewal or transition to pregnancy-related coverage.

<sup>44</sup> 42 U.S.C. § 18022(b)(1)(D). See also Michelle Lilienfeld, *The Importance of the Essential Health Benefits in the Private Market*, NAT'L HEALTH LAW PROGRAM (Jan. 12, 2017), <http://www.healthlaw.org/issues/health-care-reform/importance-of-the-essential-health-benefits-in-the-private-market>. Recent legislation attempting to repeal and replace the ACA would give states the option of waiving EHBs. For more information about the damage this would do to women and children, see Adam Sonfield, *No One Benefits if Women Lose Coverage for Maternity Care*, GUTTMACHER INST. (June 14, 2017), <https://www.guttmacher.org/gpr/2017/06/no-one-benefits-if-women-lose-coverage-maternity-care>.

<sup>45</sup> Essential Health Benefits Bulletin, CTR. FOR CONSUMER INFO. & INS. OVERSIGHT (Dec. 16, 2011), [https://www.cms.gov/CCIIO/Resources/Files/Downloads/essential\\_health\\_benefits\\_bulletin.pdf](https://www.cms.gov/CCIIO/Resources/Files/Downloads/essential_health_benefits_bulletin.pdf).

<sup>46</sup> INTERNAL REVENUE SERV., NOTICE 2014-71, ELIGIBILITY FOR MINIMUM ESSENTIAL COVERAGE UNDER PREGNANCY-BASED MEDICAID PROGRAMS (2014), <https://www.irs.gov/pub/irs-drop/n-14-71.pdf> ("An individual enrolled in a qualified health plan who becomes eligible for Medicaid coverage for pregnancy-related services that is minimum essential coverage, or for CHIP coverage based on pregnancy, is treated as eligible for minimum essential coverage under the Medicaid or CHIP coverage for purposes of the premium tax credit only if the individual enrolls in the coverage.").

Maybe. Having a baby may qualify a woman to re-enroll in Marketplace coverage if the newborn is eligible for Marketplace coverage and an SEP.<sup>47</sup>

#### **4. Will a Marketplace health plan also cover a newborn?**

Yes. The ACA's EHB requirement mandates coverage of maternity and newborn care. Newborn care covers childbirth and immediate care for the baby after birth. The specifics of this coverage will vary by state and by each individual plan, but all women in Marketplace coverage must also enroll their baby in coverage soon after birth.

If the newborn is eligible for Marketplace coverage, then the parents can choose to add the baby to the family's existing Marketplace plan or choose a new Marketplace plan for the baby.<sup>48</sup> If they opt for the latter, they can enroll the baby into a new Marketplace plan at any metal tier.<sup>49</sup> However, when enrolling a newborn into Marketplace coverage, other members of the household are generally not permitted to change their existing Marketplace coverage.<sup>50</sup>

#### **5. Is abortion covered by Marketplace plans?**

In some states, depending on the plan. Twenty-five states restrict the availability of abortion coverage in Marketplace health plans. Two states restrict it entirely, and 23 restrict it to variations of the Hyde exceptions. The remaining states have no restrictions.<sup>51</sup>

### **Women Already Enrolled in Employer-Sponsored or Other Non-Marketplace Private Insurance**

#### **1. Do employer-sponsored or other non-Marketplace private insurance plans provide women with comprehensive coverage, including maternity care?**

It depends. Small group employer-sponsored plans must include the EHBs, including maternity and newborn care, but large group and self-insured employer-sponsored plans are exempt from this requirement.<sup>52</sup>

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<sup>47</sup> 45 C.F.R. § 155.420(d)(2)(i). If a woman continues to be eligible for Medicaid, e.g. as the caretaker of a minor child, they will not be eligible for APTCs as a result of qualifying for other MEC. 26 U.S.C. § 36B(c)(2)(B).

<sup>48</sup> 82 Fed. Reg. 18346, 18360-18361 (April 18, 2017).

<sup>49</sup> *Id.*

<sup>50</sup> 45 C.F.R. § 155.420(d)(2)(i); 45 C.F.R. § 155.420(a)(4)(i).

<sup>51</sup> *Restricting Insurance Coverage of Abortion*, GUTTMACHER INST. (June 1, 2017), <https://www.guttmacher.org/state-policy/explore/restricting-insurance-coverage-abortion>; Salganicoff et al., *supra* note 20.

<sup>52</sup> Michelle Lilienfeld, *Health Advocate: Essential Health Benefits Overview*, NAT'L HEALTH LAW PROGRAM (Aug. 17, 2015), <http://www.healthlaw.org/issues/health-care-reform/Health-Advocate-EHB>.

## 2. Can a woman remain on private insurance while using Medicaid benefits?

Yes. A woman who meets the income and eligibility requirements for Medicaid may use it alongside a private, non-Marketplace insurance plan.<sup>53</sup>

## 3. Does private insurance also cover a newborn?

It depends. Small group employer-sponsored plans must include the EHBs, including maternity and newborn care, but large group and self-insured employer-sponsored plans are exempt from this requirement.<sup>54</sup> While the requirement for newborn care covers childbirth and immediate care following birth, women must enroll their babies in coverage soon after birth.

## 4. Does private insurance cover abortion?

In some states, depending on the plan. Ten states restrict the availability of abortion coverage in private health plans, and the remaining have no such restrictions.<sup>55</sup>

## Conclusion

Navigating the different types of health care coverage available to pregnant women can be difficult. Fortunately, with the advent of the ACA, pregnant women have increased health care coverage options. Low-income women who are uninsured upon becoming pregnant may enroll in Medicaid and receive comprehensive health care services during and immediately after pregnancy. Women who already have health insurance at the time they become pregnant can typically keep that coverage or, if they qualify, transition to Medicaid. Upon giving birth, a woman's health coverage options might change again, allowing for transition to new care or back to a previous source of health care coverage.

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<sup>53</sup> *Medicaid Coverage for Pregnancy Women Remains Critical for Women's Health*, NAT'L WOMEN'S LAW CTR. (May 2015), [https://nwlc.org/wp-content/uploads/2015/08/medicaid\\_coverage\\_for\\_pregnant\\_woman3.pdf](https://nwlc.org/wp-content/uploads/2015/08/medicaid_coverage_for_pregnant_woman3.pdf).

<sup>54</sup> Michelle Lilienfeld, *supra* note 52.

<sup>55</sup> *Restricting Insurance Coverage of Abortion*, *supra* note 51; Salganicoff et al., *supra* note 20.